

Millennium Challenge Corporation

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date. The FOIA Officer shall also notify the requester that the requested records will be made available.

(e) *Notice of lawsuit.* If the requester files a lawsuit seeking to compel disclosure of confidential commercial information, the FOIA Officer shall promptly notify the submitter of this action. If a submitter files a lawsuit seeking to prevent disclosure of confidential commercial information, the FOIA Officer shall notify the requester.

(f) *Exceptions to the notice requirements under this section.* The notice requirements under paragraphs (a) and (b) of this section shall not apply if:

(1) The FOIA Officer determines that the information should not be disclosed pursuant to Exemption 4 and/or any other exemption of the FOIA;

(2) The information lawfully has been published or officially made available to the public;

(3) Disclosure of the information is required by law (other than the FOIA);

(4) The information requested is not designated by the submitter as exempt from disclosure in accordance with this part, when the submitter had the opportunity to do so at the time of submission of the information or within a reasonable time thereafter, unless the agency has substantial reason to believe that disclosure of the information would result in competitive harm; or

(5) The designation made by the submitter in accordance with this part appears obviously frivolous. When the FOIA Officer determines that a submitter was frivolous in designating information as confidential, the FOIA Officer must provide the submitter with written notice of any final administrative disclosure date, but no opportunity to object to disclosure will be offered.

§ 1304.8 Appeals.

(a) *Right of appeal.* The requester has the right to appeal to the FOIA Appeals Officer any adverse determination.

(b) *Notice of appeal*—(1) *Timing for appeal.* An appeal must be received no later than thirty (30) working days after notification of denial of access to records or after the time limit for response by the FOIA Officer has expired. Prior to submitting an appeal any out-

standing fees related to FOIA requests must be paid in full.

(2) *Method of appeal.* An appeal shall be initiated by filing a written notice of appeal. The notice shall be accompanied by copies of the original request and initial denial of access to records. To expedite the appellate process and give the requester an opportunity to present his or her arguments, the notice should contain a brief statement of the reasons why the requester believes the initial denial of access to records was in error. The appeal shall be addressed to the Millennium Challenge Corporation, Attn: FOIA Appeals Officer, 875 Fifteenth Street, NW., Washington, DC 20005.

(c) *Final agency determinations.* The FOIA Appeals Officer shall issue a final written determination, stating the basis for his or her decision, within twenty (20) working days after receipt of a notice of appeal. If the determination is to provide access to the requested records, the FOIA Officer shall make those records immediately available to the requester. If the determination upholds the denial of access to the requested records, the FOIA Appeals Officer shall notify the requester of the determination.

§ 1304.9 Fees.

(a) *General.* Fees pursuant to the FOIA shall be assessed according to the schedule contained in paragraph (b) of this section for services rendered by MCC in response to requests for records under this part. MCC's fee practices are governed by the FOIA and by the Office of Management and Budget's Uniform Freedom of Information Act Fee Schedule and Guidelines. All fees shall be charged to the requester, except where the charging of fees is limited under paragraph (d) of this section or where a waiver or reduction of fees is granted under paragraph (c) of this section. Payment of fees should be in U.S. Dollars in the form of either a check or bank draft drawn on a bank in the United States or a money order. Payment should be made payable to the Treasury of the United States and mailed to the Millennium Challenge Corporation, 875 Fifteenth Street, NW., Washington, DC 20005.

(b) *Charges for responding to FOIA requests.* The following fees shall be assessed in responding to requests for records submitted under this part, unless a waiver or reduction of fees has been granted pursuant to paragraph (c) of this section:

(1) *Duplications.* The FOIA Officer shall charge \$0.20 per page for copies of documents up to 8½ x 14. For copies prepared by computer, the FOIA Officer will charge actual costs of production of the computer printouts, including operator time. For other methods of reproduction, the FOIA Officer shall charge the actual costs of producing the documents.

(2) *Searches*—(i) *Manual searches.* Search fees will be assessed at the rate of \$25.30 per hour. Charges for search time less than a full hour will be in increments of quarter hours.

(ii) *Computer searches.* The FOIA Officer will charge the actual direct costs of conducting computer searches. These direct costs shall include the cost of operating the central processing unit for that portion of operating time that is directly attributable to searching for requested records, as well as the costs of operator/programmer salary apportionable to the search. MCC is not required to alter or develop programming to conduct searches.

(3) *Review fees.* Review fees shall be assessed only with respect to those requesters who seek records for a commercial use under paragraph (d)(1) of this section. Review fees shall be assessed at the rate of \$43.63 per hour. Review fees shall be assessed only for the initial record review, for example, review undertaken when the FOIA Officer analyzes the applicability of a particular exemption to a particular record or portion thereof at the initial request level. No charge shall be assessed at the administrative appeal level of an exemption already applied.

(c) *Statutory waiver.* Documents shall be furnished without charge or at a charge below that listed in paragraph (b) of this section where it is determined, based upon information provided by a requester or otherwise made known to the FOIA Officer, that disclosure of the requested information is in the public interest. Disclosure is in the public interest if it is likely to con-

tribute significantly to public understanding of government operations and is not primarily for commercial purposes. Requests for a waiver or reduction of fees shall be considered on a case-by-case basis. In order to determine whether the fee waiver requirement is met, the FOIA Officer shall consider the following six factors:

(1) The subject of the request. Whether the subject of the requested records concerns the operations or activities of the government;

(2) The informative value of the information to be disclosed. Whether disclosure is likely to contribute to an understanding of government operations or activities;

(3) The contribution to an understanding of the subject by the general public likely to result from disclosure. Whether disclosure of the requested information will contribute to public understanding;

(4) The significance of the contribution to public understanding. Whether the disclosure is likely to contribute significantly to public understanding of government operations or activities;

(5) The existence and magnitude of commercial interest. Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so

(6) The primary interest in disclosure. Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

(d) *Types of requesters.* There are four categories of FOIA requesters: Commercial use requesters; educational and non-commercial scientific institutional requesters; representatives of the news media; and all other requesters. These terms are defined in §1304.2. The following specific levels of fees are prescribed for each of these categories:

(1) *Commercial use requesters.* The FOIA Officer shall charge commercial use requesters the full direct costs of searching for, reviewing, and duplicating requested records.

(2) *Educational and non-commercial scientific institution requesters.* The FOIA Officer shall charge educational and

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non-commercial scientific institution requesters for document duplication only, except that the first 100 pages of paper copies shall be provided without charge.

(3) *News media requesters.* The FOIA Officer shall charge news media requesters for document duplication costs only, except that the first 100 pages of paper copies shall be provided without charge.

(4) *All other requesters.* The FOIA Officer shall charge requesters who do not fall into any of the categories in paragraphs (d)(1) through (3) of this section fees which recover the full reasonable direct costs incurred for searching for and reproducing records if that total cost exceeds \$14.99, except that the first 100 pages of duplication and the first two hours of manual search time shall not be charged.

(e) *Charges for unsuccessful searches.* If the requester has been notified of the estimated cost of the search time and has been advised specifically that the requested records may not exist or may be withheld as exempt, fees may be charged.

(f) *Nonpayment of fees.* The FOIA Officer may assess interest charges on an unpaid bill, accrued under previous FOIA request(s), starting the thirty-first (31st) day following the day on which the bill was sent to the requester. Interest will be at the rate prescribed in 31 U.S.C. 3717. MCC will require the requester to pay the full amount owed plus any applicable interest as provided above, and to make an advance payment of the full amount of the remaining estimated fee before MCC will begin to process a new re-

quest or continue processing a then-pending request from the requester. The administrative response time limits prescribed in subsection (a)(6) of the FOIA will begin only after MCC has received fee payments described in this section.

(g) *Aggregating requests.* The requester or a group of requesters may not submit multiple requests at the same time, each seeking portions of a document or documents solely in order to avoid payment of fees. When the FOIA Officer reasonably believes that a requester is attempting to divide a request into a series of requests to evade an assessment of fees, the FOIA Officer may aggregate such request and charge accordingly.

(h) *Advance payment of fees.* Fees may be paid upon provision of the requested records, except that payment will be required prior to that time if the requester has previously failed to pay fees or if the FOIA Officer determines the total fee will exceed \$250.00. When payment is required in advance of the processing of a request, the time limits prescribed in §1304.5 shall not be deemed to begin until the FOIA Officer has received payment of the assessed fee. Where it is anticipated that the cost of providing the requested record will exceed \$25.00 but fall below \$250.00 after the free duplication and search time has been calculated, MCC may, in its discretion may require either:

(1) An advance deposit of the entire estimated charges; or

(2) Written confirmation of the requester's willingness to pay such charges.